

Exhibit A

FILED

APR 19 2007

Clerk of the Napa Superior Court
By: M. Bonawit
Deputy

1 MICHAEL E. KINNEY
2 Bar No. 77018
3 Law Office of Michael E. Kinney
4 438 First St.
5 Fourth Floor
6 Santa Rosa, CA 95401
7 (707) 527-4141

8 Attorney for Plaintiff
9 DONNA MATHEWS

DELAY REDUCTION CASE

CASE MANAGEMENT CONFERENCE

DATE: 9-20-07

TIME: 8:30am

PLACE: Courtroom

825 Brown Street, Napa CA 94559

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

11 DONNA MATHEWS,

12 Plaintiff,

13 vs.

14 PAN AMERICAN LIFE INSURANCE
15 COMPANY; and DOE 1 through Doe 20,
16 Inclusive,

17 Defendants.

No. **26-37498**

COMPLAINT FOR BREACH OF
CONTRACT, BREACH OF THE
COVENANT OF GOOD FAITH
AND FAIR DEALING, FRAUD,
NEGLIGENT
MISREPRESENTATION,
INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS, UNFAIR
BUSINESS PRACTICES

UNLIMITED CIVIL CASE

18 COME NOW Plaintiff DONNA MATHEWS and complains and alleges as follows:

19
20 GENERAL ALLEGATIONS

21 1. Plaintiff DONNA MATHEWS is and at all times relevant hereto was a
22 resident of the County of Napa, State of California.

23 2. Plaintiff is informed and believes and thereon alleges that Defendant PAN
24 AMERICAN LIFE INSURANCE COMPANY is, and at all times relevant hereto was, a
25 corporation duly authorized to do business, and doing business as an insurance company in the
26 State of California.

27 3. The true names and capacities, whether individual, corporate, associate or
otherwise of Defendants Doe 1 through Doe 20, inclusive, are unknown to Plaintiff, who therefore

APR 18 2007

1 | sues said Defendants by such fictitious names. Plaintiff will amend this Complaint to show their
2 | true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges
3 | that said Defendants, and each of them, were in some way responsible for the harm caused to
4 | Plaintiff as alleged in this Complaint.

5 | 4. Plaintiff is informed and believes and thereon alleges that each of the
6 | Defendants herein was at all times relevant hereto the agent, employee or representative of the
7 | remaining Defendants and was acting at least in part within the course and scope of such
8 | relationship.

9 | 5. In or about May 1991, at Napa County, California, Plaintiff purchased a
10 | long term disability insurance policy from Defendants, designated by Defendants as Policy No.
11 | 0012857640. Between May 1991 and November 2005, Plaintiff purchased two additional long
12 | term disability insurance policies from Defendants, designated by Defendants as Policy No.
13 | 0012577580 and Policy No. 1257573. The three long term disability policies are hereinafter
14 | collectively designated as "the Policies." This Policies, by their terms, purported to provide long
15 | term disability insurance benefits, including monthly benefit payments and additional funds for the
16 | vocational rehabilitation of the policy holder.

17 | 6. Plaintiff authorized Defendants to make withdrawals from Plaintiff's bank
18 | account monthly in the amount of the monthly premiums for the Policies. Defendants made such
19 | monthly withdrawals. All premiums on the Policies were paid up to the date of Plaintiff's
20 | disability, and the Policies have remained in effect at all times relevant hereto.

21 | 7. In November 2005, Plaintiff fell off a ladder and was injured. Plaintiff
22 | suffered a shoulder injury which rendered her disabled from her regular job as a dental hygienist.
23 | Defendants have determined that the date of the inception of Plaintiff's disability is December 14,
24 | 2005. Plaintiff has been continuously disabled since December 2005, and remains disabled at this
25 | time.

26 | 8. Plaintiff provided Defendants with prompt notice of her injury and
27 | disability.

28 | 9. The Policies provide for a waiver of premium payments during the

1 policyholder's disability, but that premiums must be paid during the first ninety days of disability.
2 The Policies further provide that Defendants "will refund any premiums paid during the first ninety
3 days of disability, if premiums are waived." Following Plaintiff's disability, Defendants continued
4 to withdraw premiums from Plaintiff's account, but refused, and continue to refuse, to refund the
5 full amount of premiums paid during the first ninety days of Plaintiff's disability, although Plaintiff
6 requested a full refund.

7 10. On or about March 15, 2006, without first contacting Plaintiff or
8 Plaintiff's employer or otherwise performing a reasonable investigation as to whether Plaintiff was
9 still disabled or had returned to work, Defendants unilaterally stopped paying benefits to Plaintiff.
10 Plaintiff had not returned to work and was still disabled, as Defendants knew or reasonably should
11 have known.

12 11. On or about April 17, 2006, without prior notice to Plaintiff, Defendants
13 improperly withdrew the sum of \$1,189.61 from Plaintiff's bank account. Plaintiff is informed
14 and believes that Defendants claim that this sum represents an annual premium for two of the
15 policies and a monthly premium for the third policy. At no time has Plaintiff ever authorized
16 Defendants to withdraw more than a monthly premium, and Defendants have never been
17 authorized to withdraw an annual premium from Plaintiff's account. On or about April 17, 2006,
18 Plaintiff was disabled and had been disabled for more than ninety days. Under the terms of the
19 Policies, premiums were waived and Defendants were not entitled to any premium payment
20 whatsoever at that time.

21 12. In March 2006, Defendants paid Plaintiff benefits on Policy No.
22 0012857640 and on Policy No. 0012577580, but did not pay benefits due under the third policy,
23 although such benefits were clearly due and owing to Plaintiff. Defendants concealed from
24 Plaintiff the fact that they were not paying all of the benefits to which Plaintiff was due and
25 provided Plaintiff no notice whatsoever that Defendants had underpaid Plaintiff.

26 13. Following Plaintiff's disability in December 2005, Defendants withdrew
27 funds from Plaintiff's bank account as a premium payment on Policy No. 1257573. These
28 withdrawals continued without interruption through August 2006, although Defendants were

1 obligated to waive the premium during the period of Plaintiff's disability.

2 14. Defendants improperly suspended all payments of Plaintiff's benefits on
3 all of the Policies and made no payments whatsoever to Plaintiff from March 6, 2006 until July 13,
4 2006, even though Defendants knew or reasonably should have known that Plaintiff was disabled
5 during this entire period. On July 13, 2006, Defendants resumed paying benefits on Policy No.
6 0012857640 and on Policy No. 0012577580. Although Defendants then owed Plaintiff for four
7 months of benefits on those two policies, they paid only a portion of the benefits then past due.
8 Since July 2006, Defendants have never brought current the benefits payments due to Plaintiff, and
9 remain months in arrears on the payments due to Plaintiff.

10 15. Defendants failed to pay any benefits on Policy No. 1257573 until
11 September 2006, by which time Defendants owed benefits for seven months. In September 2006,
12 Defendants paid a portion of the benefits then past due. Since September 2006, Defendants have
13 never brought current the benefits payments due to Plaintiff, and remain months in arrears on the
14 payments due to Plaintiff,

15 16. In addition to monthly benefit payments, the Policies provide the benefit
16 of rehabilitation. The Policies provide:

17 "We will pay for a rehabilitation program that we approve. Maximum
18 payment for a single disability will be 24 times the Monthly Benefit. With our
19 permission this maximum may be waived. This payment will have no effect on any
20 other benefit of this policy.'

21 17. Plaintiff duly applied to Defendants for the rehabilitation benefit offered
22 by the policy. Defendants denied Plaintiff's request for rehabilitation benefits without basis or
23 explanation. Plaintiff's request for the rehabilitation benefit was reasonable and proper and
24 Defendants' denial was completely unjustified.

25 18. Defendants have engaged in tactics designed to confuse Plaintiff and to
26 cover up Defendants' inadequate payment of benefits and excessive withdrawal of premiums from
27 Plaintiff's bank account. These tactics include sending Plaintiff undated Explanations of Benefits,
28 sending premium notices at times when Defendants were obligated to waive premiums, sending

1 premium refund checks without explanation of what premiums were being refunded, sending
2 benefit payments in the wrong amount, and refusing to account for all premiums withdrawn from
3 Plaintiff's account.

4 19. When Plaintiff complained about the conduct of Defendants, Defendants
5 responded by compelling Plaintiff to attend a medical examination more than 100 miles from
6 Plaintiff's home. Plaintiff is informed and believes that Defendants took this action to retaliate
7 against Plaintiff for complaining about the conduct of Defendants.

8 FIRST CAUSE OF ACTION
9 AGAINST DEFENDANTS AND EACH OF THEM
10 FOR BREACH OF CONTRACT

11 20. Plaintiff hereby repeats and repleads Paragraph 1 through Paragraph 19 of
12 the General Allegations.

13 21. Defendants, and each of them, have failed and refused to perform their
14 contractual obligation under the Policies to pay Plaintiff's benefits in full, to refund all premiums
15 taken during Plaintiff's disability, and to provide Plaintiff with rehabilitation benefits, although
16 demand therefor has been made.

17 22. Plaintiff paid all premiums and performed all acts required of her under
18 the Policies.

19 23. As the result of Defendants' breach of contract, as aforesaid, Plaintiff has
20 suffered a loss of the benefits provided by the Policies plus such reasonably foreseeable
21 consequential damages as she has and will incur in the future.

22 SECOND CAUSE OF ACTION
23 AGAINST DEFENDANTS AND EACH OF THEM
24 FOR BREACH OF THE COVENANT OF GOOD FAITH
25 AND FAIR DEALING

26 24. Plaintiff hereby repeats and repleads Paragraph 1 through Paragraph 19 of
27 the General Allegations and Paragraph 21 through Paragraph 23, inclusive of the First Cause of
28 Action.

1 25. The decision of Defendants, and each of them, to withhold benefits
2 payments due under the Policy, to refuse to provide rehabilitation benefits, to refuse to fully refund
3 premiums paid during Plaintiff's disability, to engage in tactics to confuse Plaintiff and obfuscate
4 Defendants wrongdoing, and to retaliate against Plaintiff was unreasonable because:

- 5 a. Defendants failed to investigate Plaintiff's claim thoroughly;
6 b. Defendants failed to evaluate Plaintiff's claim objectively;
7 c. Defendants utilized an unduly restrictive, overly technical and clearly
8 erroneous interpretation of the Policy which ignored established law;
9 d. Defendants failed to adequately communicate with Plaintiff, and failed
10 to state an adequate basis for the refusal to pay Plaintiff's claim;
11 e. Defendants misrepresented pertinent facts or insurance policy
12 provisions relating to refund of premiums, policies in force, benefits due
13 and Plaintiff's right to rehabilitation benefits;
14 f. Defendants failed to adopt and implement reasonable standards for the
15 prompt investigation and processing of claims arising from policies like
16 Plaintiff's;
17 g. Defendants failed to make prompt and timely payment of benefits
18 which it acknowledged were due; and
19 h. Defendants engaged in abusive practices to avoid paying claims.

20 26. The acts of Defendants, as aforesaid, constitute a breach of the covenant
21 of good faith and fair dealing.

22 27. As a proximate result of Defendants' bad faith, Plaintiff has suffered and
23 continues to suffer losses of the benefits provided by the Policy and has suffered and continues to
24 suffer injury, embarrassment, humiliation and mental anguish all to her damage in an amount
25 according to proof. Plaintiff has been required to retain an attorney and incur attorney fees to
26 enforce the Policies.

27 28. Defendants committed the acts alleged herein maliciously, fraudulently
28 and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil

1 motive amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is thus
2 entitled to recover punitive damages from Defendants, and each of them, in an amount according
3 to proof.

4
5 **THIRD CAUSE OF ACTION**
6 **AGAINST DEFENDANTS AND EACH OF THEM**
7 **FOR FRAUD**

8 29. Plaintiff hereby repeats and repleads Paragraph 1 through Paragraph 19 of
9 the General Allegations, Paragraph 21 through Paragraph 23, inclusive of the First Cause of
10 Action, and Paragraph 25 through Paragraph 28, inclusive of the Second Cause of Action.

11 30. In obtaining the Policies and in keeping the Policies in force, Plaintiff
12 reasonably relied upon the representations contained in Defendants' advertising and in the Policies
13 that Plaintiff would be paid benefits timely and in full as provided by the Policies, that premiums
14 would be waived during the period of Plaintiff's disability, that premiums paid at the beginning of
15 Plaintiff's disability would be refunded, that Plaintiff would be permitted the rehabilitation benefit
16 stated in the policy.

17 31. The representations described in the preceding Paragraph were false. The
18 true fact was that Defendants would not do any of the things described in the preceding Paragraph,
19 but instead would refuse to do those things and would attempt to obfuscate and cover up yheir
20 refusal and would retaliate against Plaintiff if she complained.

21 32. Defendants knew, or in the exercise of reasonable care should have
22 known, that the representations described above were false, but nonetheless failed to tell Plaintiff
23 the true facts. Said representations were made with the intent to deceive Plaintiff and to induce
24 Plaintiff to pay premiums on the Policies.

25 33. As a proximate result of Defendants' fraud, Plaintiff has suffered and
26 continues to suffer losses of the benefits provided by the Policy and has suffered and continues to
27 suffer injury, embarrassment, humiliation and mental anguish all to her damage in an amount
28 according to proof.

34. Defendants committed the acts alleged herein maliciously, fraudulently

1 and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil
2 motive amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is thus
3 entitled to recover punitive damages from Defendants, and each of them, in an amount according
4 to proof.

5
6 **FOURTH CAUSE OF ACTION**
7 **AGAINST DEFENDANTS AND EACH OF THEM**
8 **FOR NEGLIGENT MISREPRESENTATION**

9 35. Plaintiff hereby repeats and repleads Paragraph 1 through Paragraph 19 of
10 the General Allegations, Paragraph 21 through Paragraph 23, inclusive of the First Cause of
11 Action, Paragraph 25 through Paragraph 28, inclusive of the Second Cause of Action, and
12 Paragraph 30 through Paragraph 34 of the Third Cause of Action.

13 36. Plaintiff is informed and believes and thereon alleges that during the time
14 Defendants misled Plaintiff, as aforesaid, Defendants lacked any reasonable ground for believing
15 the representations described above to be true. Plaintiff justifiably relied on said statements.

16 37. As a proximate result of Defendants' negligent misrepresentations,
17 Plaintiff has suffered and continue to suffer losses of the benefits provided by the Policy and has
18 suffered and continues to suffer injury, embarrassment, humiliation and mental anguish all to her
19 damage in an amount according to proof.

20 **FIFTH CAUSE OF ACTION**
21 **AGAINST DEFENDANTS AND EACH OF THEM**
22 **FOR UNFAIR BUSINESS PRACTICES**

23 38. Plaintiff hereby repeats and repleads Paragraph 1 through Paragraph 19 of
24 the General Allegations, Paragraph 21 through Paragraph 23, inclusive of the First Cause of
25 Action, and Paragraph 25 through Paragraph 28, inclusive of the Second Cause of Action,
26 Paragraph 30 through Paragraph 34 of the Third Cause of Action, and Paragraph 36 through 37,
27 inclusive of the Fourth Cause of Action.

28 39. The practices of Defendants described hereinabove are unlawful, unfair or
fraudulent business practices of the sort prohibited by California Business and Professions Code

1 section 17200.

2 40. Defendants have improperly profited from the practices described above.

3 SIXTH CAUSE OF ACTION
4 AGAINST DEFENDANTS AND EACH OF THEM
5 FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

6 41. Plaintiff hereby repeats and repleads Paragraph 1 through Paragraph 19 of
7 the General Allegations, Paragraph 21 through Paragraph 23, inclusive of the First Cause of
8 Action, Paragraph 25 through Paragraph 28, inclusive of the Second Cause of Action, Paragraph
9 30 through Paragraph 34 of the Third Cause of Action, Paragraph 36 through 37, inclusive of the
10 Fourth Cause of Action, and Paragraph 39 through Paragraph 40 inclusive of the Fifth Cause of
11 Action.

12 42. The conduct set forth hereinabove was extreme and outrageous and an
13 abuse of the authority and position of Defendants and each of them. Said conduct was intended to
14 cause severe emotional distress, or was done in conscious disregard of the probability of causing
15 such distress.

16 43. As a proximate result of Defendants' intentional conduct, as aforesaid,
17 Plaintiff suffered emotional distress and mental suffering, embarrassment, humiliation and mental
18 anguish all to his damage in an amount according to proof.

19 44. Defendants committed the acts alleged herein maliciously, fraudulently
20 and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil
21 motive amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff thus is
22 entitled to recover punitive damages from defendant in an amount according to proof.

23 SEVENTH CAUSE OF ACTION
24 AGAINST DEFENDANTS AND EACH OF THEM
25 FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

26 45. Plaintiff hereby repeats and repleads Paragraph 1 through Paragraph 19 of
27 the General Allegations, Paragraph 21 through Paragraph 23, inclusive of the First Cause of
28 Action, Paragraph 25 through Paragraph 28, inclusive of the Second Cause of Action, Paragraph

1 30 through Paragraph 34 of the Third Cause of Action, Paragraph 36 through 37, inclusive of the
 2 Fourth Cause of Action, and Paragraph 39 through Paragraph 40 inclusive of the Fifth Cause of
 3 Action.

4 46. The conduct set forth hereinabove was extreme and outrageous and an
 5 abuse of the authority and position of Defendants and each of them. Defendants knew, or should
 6 have known, that their acts would cause plaintiff emotional distress.

7 47. As a proximate result of Defendants' negligence, as aforesaid, Plaintiff
 8 suffered emotional distress and mental suffering, embarrassment, humiliation and mental anguish
 9 all to his damage in an amount according to proof.

10 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as
 11 follows:

12 ON THE FIRST CAUSE OF ACTION

- 13 1. For damages according to proof;
- 14 2. For prejudgment interest on that sum;
- 15 3. For costs of suit herein incurred; and
- 16 4. For such other and further relief as the Court deems proper.

17 ON THE SECOND, THIRD AND SIXTH CAUSES OF ACTION

- 18 1. For special damages according to proof;
- 19 2. For general damages according to proof;
- 20 3. For punitive damages in a sum sufficient to punish Defendants;
- 21 4. For Plaintiff's attorney fees incurred to enforce the Policies;
- 22 5. For costs of suit herein incurred; and
- 23 6. For such other and further relief as the Court deems proper.

24 ON THE FOURTH AND SEVENTH CAUSES OF ACTION

- 25 1. For special damages according to proof;
- 26 2. For general damages according to proof;
- 27 3. For costs of suit herein incurred; and
- 28 4. For such other and further relief as the Court deems proper.

ON THE FIFTH CAUSE OF ACTION

1. For an order that Defendants and their agents, attorneys, servants and employees be restrained and enjoined from the unfair business practices as alleged;
2. For an order that Defendants and their agents, attorneys, servants and employees disgorge any and all profits they have made attributable to said unfair business practices;
3. For an award of attorney fees pursuant to Code of Civil Procedure section 1021.5;
4. For costs of suit herein incurred;
5. For such other and further relief as the Court deems proper.

Dated: April 16, 2007

LAW OFFICE OF MICHAEL E. KINNEY

By: Michael E. Kinney
Michael E. Kinney
Attorney for Plaintiff

Exhibit B

COMPRESSED TRANSCRIPT OF:

Cory Simon, Volume 1

Date Taken:

March 13, 2008

Case:

Donna Mathews v. Pan American Life Insurance Company

Affiliated Reporting

650 Poydras Street, Suite 2610

New Orleans, LA 70130

Phone: 504-568-9111

1-877-568-9111

Fax: 504-568-9110

Email: pages@affiliatedreporting.com

Internet: www.affiliatedreporting.com

1 Is that how you understood it?

2 A. Yes.

3 Q. Okay.

4 MR. EVANS:

5 You know, just to interpose an
6 objection to that as vague.

7 MR. KINNEY:

8 Vague?

9 MR. EVANS:

10 Whatever you mean by occupational
11 rehab.

12 EXAMINATION BY MR. KINNEY:

13 Q. Okay. Vocational rehabilitation, do you
14 understand what I mean by that?

15 A. Yes.

16 MR. EVANS:

17 Same objection.

18 EXAMINATION BY MR. KINNEY:

19 Q. When a claimant requests rehabilitation
20 benefits, what is Pan Am's process for
21 reviewing and deciding on that claim?

22 A. Generally we would find out what type of
23 occupational vocational rehabilitation and
24 into what field for future employment the
25 insured would want to take on.

1 Q. Anything else?

2 A. We generally ask them for some type of
3 action plan that would describe what the
4 course of study would be, how long it would
5 take, how they expect this to accomplish
6 their goal of returning to work.

7 Q. Okay. Anything else in terms of
8 information you would request?

9 A. No.

10 Q. Okay. And what criteria would you use to
11 decide whether or not to provide the
12 rehabilitation benefits?

13 A. If it was -- If it would result in an
14 occupation whereas the insured or claimant
15 would be able to return to normal full-time
16 work.

17 Q. That's the only criteria?

18 A. We would also -- Once they returned to such
19 normal full-time work, we would expect the
20 claim to end at that point.

21 Q. Anything else that would be a criterion in
22 determining whether or not to grant the
23 rehabilitation benefits?

24 A. Not to my knowledge.

25 Q. Okay. The two other rehabilitation claims

1 A. We have not.

2 Q. Okay. Have you looked at any sources of
3 information on that subject, such as the
4 Dictionary of Occupational Titles?

5 A. I have not.

6 Q. In your experience as a disability claims
7 representative and claims manager, have you
8 dealt with nurses who were disabled?

9 A. I have.

10 Q. Okay. And in the course of doing that
11 work, have you had the obligation to look
12 at the occupational duties of nurses?

13 A. I have.

14 Q. Okay. And do you know what a nurse does?

15 A. Well, a nurse specifically assists doctors
16 in caring for patients.

17 Q. Okay. But do you know what manual --
18 physical requirements there are to be a
19 registered nurse?

20 A. Not specifically.

21 Q. Okay. Do you know why Mr. Jones denied Ms.
22 Mathews' claim for rehabilitation benefits?

23 A. I believe he denied it, because when
24 responding to Ms. Mathews' request for
25 rehabilitation, we did not get a clear

1 answer or plan as to what this
2 rehabilitation would entail and how it
3 would expect to return her to normal work
4 activity in the future.

5 Q. Okay. And you have since reviewed the
6 claim since that determination was made not
7 to give her the benefit.

8 Is that right?

9 A. I have looked at aspects of the file.

10 Q. Okay. And do you believe that Mr. Jones
11 was correct to deny the claim on that
12 basis?

13 A. I do.

14 Q. What additional information should Ms.
15 Mathews have provided to Pan American such
16 that Pan American would have had sufficient
17 information to grant the claim?

18 A. We would have been able to make --

19 MR. EVANS:

20 I'm sorry.

21 Objection. Calls for speculation.

22 Go ahead.

23 THE WITNESS:

24 We would have been able to make,
25 you know, a determination or review

1 if we had known which school she was
2 planning to attend, how many course
3 hours she was planning to take, the
4 number of courses, the cost of -- you
5 know, of these courses, and her, you
6 know, pretty much, you know,
7 prognosis for going ahead and, you
8 know, completing such course work.

9 EXAMINATION BY MR. KINNEY:

10 Q. Okay. Did Pan American ask Ms. Jones to
11 provide that information?

12 A. We did.

13 Q. When?

14 A. After she made her request for the
15 rehabilitation benefit.

16 Q. Okay. Did she provide it?

17 A. She replied with not much information.

18 Q. Okay. Did Pan American explain to her what
19 additional information would be needed?

20 A. I don't recall. I think that was asked in
21 the original letter.

22 Q. Okay. Does Pan American have a duty to its
23 claimants to tell them what information is
24 needed to perfect their claim?

25 MR. EVANS:

Deposition of CORY R. SIMON

Taken on March 13, 2008

WITNESS' CERTIFICATE

I have read or have had the foregoing
testimony read to me and hereby certify that
it is a true and correct transcription of my
testimony, with the exception of any attached
corrections or changes.

CORY R. SIMON

1 REPORTER'S CERTIFICATE

2

3 I, LINDY ROOT, Certified Court Reporter,
4 do hereby certify that the above-mentioned
5 witness, after having been first duly sworn by
6 me to testify to the truth, did testify as
7 hereinabove set forth;

8 That the testimony was reported by me in
9 shorthand and transcribed under my personal
10 direction and supervision, and is a true and
11 correct transcript, to the best of my ability
12 and understanding;

13 That I am not of counsel, not related to
14 counsel or the parties hereto, and not in any
15 way interested in the outcome of this matter.

16

17

18

19

20

21

LINDY ROOT

22

CERTIFIED COURT REPORTER

23

REGISTERED PROFESSIONAL REPORTER

24

25

Exhibit C

A202B4A
DONNA MATHEWS - April 3, 2008

Page 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 ---oOo---

4
5 DONNA MATHEWS,

6 Plaintiff,

7 vs.

CASE No.: C 07-02757 SBA

8 PAN AMERICAN LIFE INSURANCE
9 COMPANY; and DOE 1 through
DOE 20, inclusive,

10 Defendants.
11 _____/

12
13 DEPOSITION OF DONNA MATHEWS

14 OAKLAND, CALIFORNIA

15 APRIL 3, 2008
16
17
18
19

20 ATKINSON-BAKER, INC.

21 COURT REPORTERS

22 (800) 288-3376

23 www.depo.com

24 REPORTED BY: LINDA ELLINGSON, CSR No. 12256

25 FILE NO.: A202B4A

A202B4A

DONNA MATHEWS - April 3, 2008

		Page 58
1	A. Not that I recall.	11:58
2	Q. Do you recall anyone at the Department of	11:58
3	Rehabilitation providing you a copy of a rehabilitation	11:58
4	plan?	11:58
5	A. I guess I don't really understand what a	11:58
6	rehabilitation plan is.	11:58
7	Q. Okay. Well, then speak more generally. Do	11:58
8	you recall getting a document from the Department of	11:58
9	Rehabilitation setting out what they would pay for?	11:58
10	A. I don't recall.	11:58
11	Q. Okay. Do you recall getting a document from	11:58
12	the Department of Rehabilitation sort of laying out what	11:58
13	courses they -- or what educational work they expected	11:58
14	you to take as part of your rehabilitation?	11:59
15	A. Could you repeat?	11:59
16	Q. Sure. Did you -- do you recall getting a	11:59
17	document from the Department of Rehabilitation laying	11:59
18	out, here's what you are going to do between now and,	11:59
19	you know, 2010 or 2011 to get into a career in nursing?	11:59
20	Something like that? Anything like that?	11:59
21	A. Well, they wouldn't tell me. I would tell	11:59
22	them what's required. And so I don't recall them	11:59
23	telling me what I had to do. I would have explained to	11:59
24	them this is what's required from me to become a nurse.	11:59
25	Q. Okay. And as you explained that to them they	11:59

A202B4A

DONNA MATHEWS - April 3, 2008

	Page 59
1 said that at least to the tuition component that the	11:59
2 Department of Rehabilitation would pay for that?	12:00
3 A. When I was accepted, yes.	12:00
4 Q. Okay. Did -- in your discussions with the	12:00
5 Department of Rehabilitation did they identify -- did	12:00
6 you discuss any particular schools that they would not	12:00
7 pay tuition for?	12:00
8 A. Yes. They said they would not pay for Pacific	12:00
9 Union College, which is ten minutes from my house, a	12:00
10 highly regarded university that I would have preferred	12:00
11 to go to, but it was too expensive. They wouldn't pay	12:00
12 for it.	12:00
13 Q. Was there any other colleges?	12:00
14 A. Well, I had to encourage shall I say. I had	12:00
15 to sort of fight for the -- for them to consider Sonoma	12:00
16 State because of the bachelor's. Because she said --	12:01
17 Lori Spiekerman said it's virtually unheard of for the	12:01
18 State of California to pay for Sonoma State when I could	12:01
19 have gotten the same education at Santa Rosa JC so I had	12:01
20 to make a case for just going to Sonoma State.	12:01
21 Q. And how did you make that case? Did you put	12:01
22 anything in writing? Did you submit anything?	12:01
23 A. I don't know if it was in writing or if Lori	12:01
24 and I had that discussion and she put in the paperwork.	12:01
25 Because I do remember her saying, "Would you like me to	12:01

A202B4A

DONNA MATHEWS - April 3, 2008

Page 60

12:01

1 fill this out or do you want to fill it out?" So I

12:01

2 don't remember if I wrote the letter or if we just had

12:01

3 the discussion about why I should be allowed to go to

4 Sonoma State.

12:01

5 Q. And was the primary reason you were fighting

12:02

6 for Sonoma State was because of the importance of the

12:02

7 bachelor's degree to your educational plans or --

12:02

8 A. Yes.

12:02

9 Q. Do you recall if it took a long time to make

12:02

10 that case? Was this something that you came -- was this

12:02

11 something that occurred over several appointments or was

12:02

12 this all during one appointment in which you were

12:02

13 discussing your bachelor's degree plan?

12:02

14 A. I don't recall.

12:02

15 Q. After -- well, other than tuition was there

12:02

16 anything else that the Department of Rehabilitation was

12:02

17 paying for?

12:03

18 MR. KINNEY: Objection, asked and answered.

12:03

19 She already testified about books.

12:03

20 THE WITNESS: They did buy me a new tower for

12:03

21 my computer. They -- a computer. And they bought me

12:03

22 software for the computer for typing.

12:03

23 BY MR. EVANS:

12:03

24 Q. And what sort of software?

12:03

25 A. Dragon Naturally Speaking.

12:03

A202B4A

DONNA MATHEWS - April 3, 2008

		Page 61
1	Q. Is that a dictation software?	12:03
2	A. Yes.	12:03
3	Q. When you say a new tower, I'm not sure what	12:03
4	you are referring to. Are you talking about a new	12:03
5	computer?	12:03
6	A. Yes.	12:03
7	Q. Okay.	12:03
8	A. That would work with the Dragon Naturally	12:03
9	Speaking because my computer was too old.	12:03
10	Q. Are you currently using the Naturally	12:04
11	Speaking?	12:04
12	A. Yes.	12:04
13	Q. Do you have any training on that?	12:04
14	A. Yes.	12:04
15	Q. And what sort of training did you have?	12:04
16	A. The junior college had a class.	12:04
17	Q. Did the Department of Rehabilitation pay for	12:04
18	that?	12:04
19	A. Yes.	12:04
20	Q. And I think the other thing we had talked	12:04
21	about was there was -- I thought you said \$300 to \$500	12:04
22	for books and other expenses. Do I recall that	12:04
23	correctly?	12:04
24	A. Hm-hmm.	12:04
25	Q. And how often is that amount made available?	12:04

1 independent doctor closer. So my understanding is that

2 they were trying to prove that I was faking it.

3 Q. So the two and a half hours you rode up there

4 that was the time to drive from your home to I guess

5 Palo Alto?

6 A. Yes.

7 Q. Did you talk to anybody at Pan American about

8 the driving time involved?

9 A. Yes.

10 Q. And who did you talk to?

11 A. I'm not sure.

12 Q. Well, what do you recall of that conversation?

13 A. Saying that I was in school -- I talked to

14 someone at Pan American asking why I had to go so far

15 for an appointment when I was enrolled in school and I

16 didn't want to miss school to go for a doctor's

17 appointment. And I didn't want to have to go so far for

18 a doctor's appointment. I was willing to go to a doctor

19 but, in fact, one of the appointments had been postponed

20 because it conflicted with school.

21 Q. So you just -- so we don't get confused let's

22 mark this as the next.

23 (Marked Deposition Exhibit Nos. 50 and 51.)

24 BY MR. EVANS:

25 Q. I'm showing you the next exhibit which is

A202B4A

DONNA MATHEWS - April 3, 2008

	Page 84
1 another notice of an independent medical exam. It says	01:38
2 it's been rescheduled. Was that rescheduling at your	01:38
3 request?	01:39
4 A. Yes.	01:39
5 Q. Because the initial date was a conflict for	01:39
6 you?	01:39
7 A. Yes.	01:39
8 Q. Did you suggest the November 15th date?	01:39
9 A. I had no say in the matter.	01:39
10 Q. Did the November 15th date pose a conflict for	01:39
11 you?	01:39
12 A. They both did. I was enrolled in school.	01:39
13 Q. And what was the conflict on November 15th?	01:39
14 A. I don't recall.	01:39
15 Q. Did you miss class because of that	01:39
16 appointment?	01:39
17 A. I don't recall.	01:39
18 Q. What did the Pan American person say when you	01:39
19 said this was two and a half hours away?	01:39
20 A. They said this is the doctor they use and I	01:39
21 didn't have a choice if I wanted to continue with my	01:39
22 benefits.	01:39
23 Q. This has been previously marked. We have a	01:40
24 separate binder of exhibits, I guess. This has been	01:40
25 previously marked as Exhibit 36.	01:40

A202B4A

DONNA MATHEWS - April 3, 2008

Page 93

1	A.	I'm not what I used to be.	01:55
2	Q.	Okay. Do you recall during the evaluation by	01:55
3		Dr. Data being tested on your ability to lift objects?	01:55
4	A.	I don't recall.	01:55
5	Q.	Okay. Do you recall ever being evaluated on	01:55
6		that by any healthcare provider?	01:55
7	A.	I don't recall.	01:56
8	Q.	Have you received any disability benefits from	01:56
9		Social Security?	01:56
10	A.	Yes.	01:56
11	Q.	And do you recall when you started receiving	01:56
12		those?	01:57
13	A.	No.	01:57
14	Q.	Are you still receiving them?	01:57
15	A.	Yes.	01:57
16	Q.	Can you estimate about how much you receive a	01:57
17		month?	01:57
18	A.	\$1,800.	01:57
19	Q.	Do you know how long you could receive those	01:57
20		benefits?	01:57
21	A.	Until I go back to work.	01:57
22	Q.	To qualify for the Social Security benefits	01:57
23		were you required to provide any medical information?	01:57
24	A.	No.	01:57
25	Q.	Were you required to go to an evaluation of	01:57

A202B4A

DONNA MATHEWS - April 3, 2008

Page 108

02:39

1 Q. Okay. Going to page -- the second page, PAL
2 0587. There's a section here called -- Section 7,
3 "Physical Impairment, Class 4. Moderate limitation of
4 functional capacity; capable of clerical/administrative
5 (sedentary) activity."

02:39

02:39

02:39

02:39

6 At the time of this statement that this
7 statement was made, did you agree with that assessment?

02:39

02:39

8 A. We didn't discuss that section.

02:39

9 Q. Okay. Under Section 9, "Prognosis."

02:40

10 Do you recall discussing your prognosis with
11 Dr. Alexander in connection with this statement?

02:40

02:40

12 A. Yes.

02:40

13 Q. And what do you recall of that discussion?

02:40

14 A. I recall his words being, this is how we play
15 the game. We have to put a date in there but I'm
16 qualifying it underneath by saying you may need surgical
17 intervention so this is what we're going to do.

02:40

02:40

02:40

02:40

18 Q. Okay. Well, between you and him what did he
19 say about what opinion did he express to you as to when
20 you would be recovered?

02:40

02:40

02:40

21 A. He didn't because he said I may need surgery
22 and we didn't know at this point because we didn't have
23 all the data.

02:40

02:40

02:40

24 Q. Okay, so he marked the one to three months box
25 and said 3/15/06, but at the time he didn't express to

02:40

02:41

A202B4A

DONNA MATHEWS - April 3, 2008

Page 109

02:41

1 you any date when he thought you might be better?

2 A. His words were, "This is how we play the

02:41

3 game."

02:41

4 Q. Beyond that do you remember anything else of
5 that conversation?

02:41

02:41

6 A. No.

02:41

7 Q. Okay. It says, "Do you expect" -- 9C, "Do you

02:41

8 expect any significant improvement in the future?" Did

02:41

9 Dr. Alexander express to you that he expected you to

02:41

10 improve in the future?

02:41

11 A. I don't recall.

02:41

12 Q. Okay. Did he discuss the need for surgical

02:41

13 intervention with you at the time?

02:41

14 A. All the information wasn't in. I hadn't -- I

02:41

15 don't think -- I just remember that we didn't know at

02:41

16 the time if I would need surgery, so it was unclear.

02:42

17 Q. Because it wasn't known yet that's why it may

02:42

18 need surgical intervention?

02:42

19 A. Correct.

02:42

20 Q. I'm showing you a document that's been

02:42

21 previously marked as Exhibit 14. It's a letter dated

02:42

22 March 6, 2006 saying, "We've enclosed forms to be

02:42

23 completed by you and your physician."

02:42

24 Do you recall what forms were being

02:42

25 transmitted with this letter?

02:43

A202B4A
DONNA MATHEWS - April 3, 2008

Page 113

02:48

1 this, needed to compose this?

02:48

2 A. Because I was afraid I would forget the

02:48

3 details.

02:48

4 Q. Okay. Well, do you know why you needed to

02:48

5 submit -- did you submit this to Pan American?

02:48

6 A. I'm not sure.

02:48

7 Q. Okay. After submitting your initial claim did

02:48

8 you -- were you told by Pan American you needed to

02:48

9 submit additional paperwork, do you recall that?

02:48

10 A. I don't recall.

02:48

11 Q. Was there a point in March 2006 where you came

02:48

12 to believe that you would be disabled for a longer

02:48

13 period of time?

02:48

14 MR. KINNEY: Longer than what?

02:48

15 BY MR. EVANS:

02:48

16 Q. Longer than three months.

02:48

17 A. I don't know how to answer that.

02:49

18 Q. Well, maybe -- yeah, going back to the

02:49

19 conversation you had with Dr. Alexander about how the

02:49

20 game is played is, you know, he had left it at one to

02:49

21 three months and there may need surgical intervention

02:49

22 because not all of the -- he didn't have all the

02:49

23 information yet.

02:49

24 Was there a time before March 2006 when you

02:49

25 learned additional -- when you received additional

A202B4A

DONNA MATHEWS - April 3, 2008

Page 126

03:27

1 Q. Did you write any letters to the bank about
2 this?

03:27

3 A. No, it was on the phone.

03:27

4 Q. It was all over the phone, okay. And then it
5 says, "Elaine informed me that the premium department of
6 your company does not have communication with your
7 claims department and I have become the victim with
8 these bounced checks."

03:27

03:27

03:27

03:27

03:27

9 Do you recall what bounced checks you are
10 referring to here?

03:27

03:27

11 A. The -- in particular the life insurance
12 checks. The life insurance withdrawals.

03:28

03:28

13 Q. Okay. Now did you forward any of that
14 correspondence with the life insurance company to Pan
15 American?

03:28

03:28

03:28

16 A. I don't recall.

03:28

17 Q. There's also a reference at the beginning of
18 the paragraph, the two service charges of \$4 each. What
19 were the service charges for?

03:28

03:28

03:28

20 A. The bounced checks. The bounced withdrawals
21 to the life insurance MetLife or General American Life,
22 the life insurance.

03:28

03:28

03:28

23 Q. Let's clarify what we mean by bounced checks.
24 Was that checks that were returned for insufficient
25 funds or was it a charge for some sort of overdraft

03:28

03:28

03:28

A202B4A

DONNA MATHEWS - April 3, 2008

Page 127

03:29

1 protection?

2 A. Insufficient funds charges is what I recall.

03:29

3 Q. Okay. Other than the two \$4 service charges

03:29

4 are you aware of any other occurring?

03:29

5 A. No.

03:29

6 Q. Were those charges reflected on any bank

03:29

7 statements?

03:29

8 A. No. Statements came by mail but to my

03:29

9 recollection it wasn't on the monthly statement. It

03:29

10 only came and then they reversed the charges. It came

03:29

11 by a separate -- we've charged your account \$4 for

03:29

12 insufficient funds, and then they credited the account,

03:29

13 I believe.

03:29

14 Q. And how did that come about where they

03:29

15 reversed the charges?

03:29

16 A. Because I phoned them up about this fiasco

03:29

17 with Pan Am and they were sympathetic to what I had to

03:29

18 go through to get them to stop withdrawing these 37.70

03:30

19 every month from my bank account. Then the life

03:30

20 insurance was going to cancel me because of insufficient

03:30

21 funds.

03:30

22 Q. Did you ever tell anyone at Pan American about

03:30

23 the situation of the life insurance?

03:30

24 A. I told Elaine about these bounced checks and

03:30

25 about the withdrawals.

03:30

A202B4A

DONNA MATHEWS - April 3, 2008

Page 131

03:36

1 your nursing education?

2 A. I'm not sure about the timing.

03:36

3 Q. Had you been asked for the -- an estimate of
4 the cost of this program would you have been able to
5 provide it on August 23rd, 2006?

03:36

03:36

03:36

6 A. If I had been asked could I provide it? I'm
7 sure I could have come up with information if Pan Am had
8 asked me.

03:36

03:36

03:36

9 Q. At any time before the lawsuit was filed did
10 you ever notify Pan American that you were receiving
11 rehabilitation benefits from the state?

03:37

03:37

03:37

12 A. Not that I recall.

03:37

13 Q. Did you ever advise Pan American that you had
14 had a rehabilitation plan approved by the state?

03:37

03:37

15 A. They didn't ask.

03:37

16 Q. Did Pan American ever ask you for a
17 rehabilitation plan?

03:37

03:37

18 A. I phoned them and I told them I wanted to

03:37

19 apply for their rehabilitation program. And they told

03:37

20 me I needed to submit it in writing. I submitted it in

03:37

21 writing. They're answer was no. And that's when I

03:37

22 wrote again and asked if there's any exceptions to their

03:37

23 policy. Do they ever say yes, and in what conditions

03:38

24 would they say yes. And I think that this was around

03:38

25 the -- this was around the time then that he just wrote

03:38

A202B4A

DONNA MATHEWS - April 3, 2008

Page 147

04:05

1 American did you provide any information regarding the
2 estimated costs?

04:05

3 A. I didn't provide anything else than what's
4 already in the record.

04:05

5 Q. Okay. And when you say in the record, just
6 because it's a term of art, we're talking about in
7 written documents; is that correct?

04:05

04:05

04:05

8 A. In written documents.

04:05

9 Q. So other than what's been transmitted to Pan
10 American in the form of letters, you haven't had any
11 other communications in which you discussed the
12 substance of a rehabilitation plan with Pan American; is
13 that correct?

04:05

04:05

04:05

04:05

04:05

14 A. That's correct.

04:05

15 Q. Have you had -- well, you've identified the
16 difficulty you had with the life insurance. But other
17 than that difficulty, are there any other financial
18 difficulties that you faced that you believe are
19 resulted from Pan American's conduct?

04:05

04:05

04:06

04:06

04:06

20 A. That's hard to answer. But I would have to
21 say that it's financially overwhelming to one day be
22 working and one day not to be working. And then to have
23 this kind of accounting practices occur, this was
24 overwhelming, too. For me to keep track of this kind of
25 thing the Department of Insurance couldn't even -- he

04:06

04:06

04:06

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A202B4A
DONNA MATHEWS - April 3, 2008

Page 148

04:06

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04:08

04:08

04:08

1 had to hire somebody separately to go through all of
2 this. So the whole thing was overwhelming to me
3 financially and emotionally.

4 Q. On the Department of Insurance investigation
5 you said he needed to hire somebody else?

6 A. There was Daryl and there was someone else.
7 Daryl was the part dealing with Pan Am saying, What are
8 you guys doing? And then he said, I've got someone in
9 accounting, they're going to try to work with Pan Am and
10 try to figure out the logistics of their accounting
11 practices.

12 Q. I see. Other than the -- other than the life
13 insurance policy, were there any other bills that you
14 had a hard time paying because of delays in payment or
15 anything like that or because of withdrawals, any of
16 that conduct?

17 A. Not that I recall.

18 Q. All right. Is your husband still employed?

19 A. Yes.

20 Q. And what's his position?

21 A. He's a teacher.

22 Q. Where does he work?

23 A. Middletown Unified School District. He's a
24 high school teacher.

25 Q. How long has he been in that position?

A202B4A

DONNA MATHEWS - April 3, 2008

Page 153

04:15

1 Q. Is there anything else that they've done to
2 cause you stress? 04:15

3 A. The entire thing has been so upsetting. No 04:15
4 one wants to go into rehabilitation. I don't want to be 04:15
5 a ward of the State. This is completely degrading that 04:15
6 the state would be paying for my education when I've 04:15
7 been paying for this policy since 1991. 04:15

8 And, is there anything else? I don't trust 04:15
9 these people as far as I could throw them. And it's 04:16
10 completely humiliating to have to go through this. And 04:16
11 every month wonder if they're going to pay me or what 04:16
12 month they're going to pay me for. 04:16

13 Q. Other than -- other than just the stress of 04:16
14 having to deal with this, how has this stress affected 04:16
15 you? 04:16

16 A. I'm in pain anyway. And when you are in pain 04:16
17 and then you have stress it increases your pain or it 04:16
18 increases your stress and then being in school doesn't 04:16
19 help. So anyone would know it's just a vicious cycle. 04:16
20 And I don't need to be worrying about Pan American. I 04:16
21 need to be worrying about my grades. I need to be 04:16
22 worrying about paying my mortgage. I need to be 04:16
23 worrying about my family and not Pan Am. I should be 04:17
24 home with my family right now instead of sitting in this 04:17
25 office. 04:17

A202B4A
DONNA MATHEWS - April 3, 2008

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF CONTRA COSTA)
4
5
6

7 I, the undersigned, declare under penalty of
8 perjury that I have read the foregoing transcript, and I
9 have made any corrections, additions, or deletions that
10 I was desirous of making; that the foregoing is a true
11 and correct transcript of my testimony contained
12 therein.

13 EXECUTED this _____ day of _____,
14 20_____, at _____, _____.
15
16
17
18
19

20 _____
21 DONNA MATHEWS
22
23
24
25

A202B4A
DONNA MATHEWS - April 3, 2008

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

2
3
4
5 I, LINDA ELLINGSON, CSR NO. 12256, a Certified
6 Shorthand Reporter in the State of California, certify
7 that the foregoing pages ____ through ____, constitute
8 a true and correct copy of the original deposition of
9 _____, taken on _____,
10 2008.

11 I declare under penalty of perjury under the
12 laws of the State of California that the foregoing is
13 true and correct.

14
15 Dated this ____ day of _____,
16 2008.

17
18
19 _____
20 Linda Ellingson, CSR No. 12256
21
22
23
24
25

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DONNA MATHEWS - April 3, 2008

CERTIFICATION

I, the undersigned, a Certified Shorthand Reporter in the State of California, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said action.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2008.

LINDA ELLINGSON, CSR No. 12256

Exhibit D

RECEIVED

MAR 29 2008

REED SMITH

1 MICHAEL E. KINNEY
2 Bar No. 77018
3 Law Office of Michael E. Kinney
4 438 First St.
5 Fourth Floor
6 Santa Rosa, CA 95401
7 (707) 527-4141
8 Fax (707) 579-9561
9 kinney@kinnlaw.com

10 Attorney for Plaintiff
11 DONNA MATHEWS

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 DONNA MATHEWS,
15 Plaintiff,

16 vs.

17 PAN AMERICAN LIFE INSURANCE
18 COMPANY; and DOE 1 through Doe 20,
19 Inclusive,

20 Defendants.
21 _____/

No. C 07-02757 SBA

PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES

22 COMES NOW Plaintiff DONNA MATHEWS, and, pursuant to Rule 33 of the
23 Federal Rules of Civil Procedure, responds to Defendant's Interrogatories. Plaintiff has not
24 completed her investigation of the facts relating to this case, has not fully completed her discovery
25 in this action and has not completed her preparation for the trial. Plaintiff's responses to the
26 interrogatories summarize information collected in a reasonable and good faith effort to obtain the
27 information requested in the interrogatories, in accord with Plaintiff's understanding of the fair
28 intent of the interrogatories, but Plaintiff's discovery and investigation in this action are
continuing. It is anticipated that further discovery, independent investigation, legal research and
analysis will supply additional facts, add meaning to the known facts, as well as establish entirely

1 new factual conclusions and legal contentions, all of which may lead to additions, corrections or
2 amendments to Plaintiff's pleadings and/or responses to the interrogatories. Plaintiff expressly
3 reserves the right to make such additions, corrections and amendments, to call at trial witnesses
4 who would have been identified, and to introduce at trial evidence which would have been
5 summarized, in response to the interrogatories had such witnesses and evidence been known to
6 Plaintiff at the time of these responses.

7 Plaintiff does not understand the interrogatories to require recitation of information
8 previously elicited and/or the identity of documents or witnesses previously identified by the parties
9 in discovery, in disclosure made pursuant to Rule 26 of the Federal Rules of Civil Procedure or
10 otherwise revealed in documents produced or on file in this action. Plaintiff expressly reserves the
11 right to present such evidence and witnesses at trial. To the extent that any of the interrogatories
12 might be construed to require such duplicative recitation of information, Plaintiff objects to each
13 such interrogatory on the grounds that it is overly broad, unduly burdensome, repetitive,
14 redundant, duplicative and requests information as readily available to Defendant as to Plaintiff.
15 Plaintiff expressly reserves the right to present such evidence and witnesses at trial.

16 Plaintiff's responses are made solely for the purpose of furthering discovery in this
17 action, and each response, and all of the information set out therein, is made subject to, and
18 without waiver of, all appropriate objections which would require exclusion of any of the disclosed
19 information from evidence at trial, to the full extent that any interrogatory would be objectionable
20 if asked of a witness at trial, including, but not limited to, objections on the grounds of
21 incompetency, irrelevance, immateriality, impropriety and privilege. All such objections are
22 hereby reserved by Plaintiff to be interposed at trial or at other appropriate time in this action.
23 Plaintiff's willingness to provide information in response to an interrogatory is not an admission
24 that such information is discoverable or that it constitutes admissible evidence, and Plaintiff's
25 present disclosure of the information is not to be construed as a waiver of any proper objection to
26 the use or admissibility of the information, or to further inquiry into the subject matter of the
27 information, at trial or at other time in this action.

28 Plaintiff does not understand any of the interrogatories to refer, relate to or seek

1 disclosure of any communication between Plaintiff and her attorneys in this action or in any other
2 legal matter or to seek disclosure of any information protected by the attorney work product
3 doctrine, and to the extent that any of the interrogatories was intended or might be construed to
4 seek such disclosure, Plaintiff objects to each such interrogatory on the grounds of attorney-client
5 privilege and/or the attorney work product doctrine. Such privileged and protected information
6 shall not be provided, and any inadvertent disclosure or production thereof shall not constitute a
7 knowing, intentional or continuing waiver of any privilege or protection.

8 The foregoing general responses and objections are incorporated by this reference into
9 each of the specific responses set out below, and each such response is made subject to, and
10 without waiver of, these general responses and objections and to any objection (including
11 objections relating to privilege, work product protection, competence, relevance, materiality and
12 admissibility) which, if interposed at trial, would result in the exclusion of any requested document
13 from evidence at trial. All such objections are hereby expressly reserved by Plaintiff to be
14 interposed at trial or at other appropriate time in this action.

15 16 **SPECIFIC RESPONSES**

17 18 **INTERROGATORY NO. 1:**

19 Identify (by providing the name, address, telephone number and dates of visits) all
20 healthcare providers, including but not limited to physicians, nurses, physical therapists,
21 occupational therapists or other caregivers whom YOU have seen for treatment or consulted in
22 connection with YOUR DISABILITY.

23 24 **RESPONSE TO INTERROGATORY NO. 1:**

25 Objection: harassing and asked in furtherance of Defendant's bad faith. Not
26 reasonably calculated to lead to the discovery of admissible evidence as Defendant has admitted
27 that Plaintiff is disabled within the meaning of the policies at issue in this matter and is paying
28 Plaintiff certain policy benefits. Without waiving these objections, Plaintiff responds to the best of

1 her recollection as follows:

2 Dr. Steven Smith
3 4706 Hoen Ave,
4 Santa Rosa, CA 95405
5 2/10/06

6 Dr. Jamie Fitzgerald McMullan
7 1900 Cinnabar Ct.
8 Calistoga, CA 94515
9 707-792-4388
10 1/20/06 and ongoing

11 Training Wellspring Physical Therapy
12 2436 Foothill Blvd.
13 Calistoga, CA 94515
14 707-942-8094
15 1/19/06 through 3/28/06

16 Dr. Andrew Alexander
17 913 Washington St.
18 Calistoga, CA 94515
19 707-942-6233
20 1/19/06

21 Dr. Eldan Eichbaum
22 525 Doyle Park Dr., No. 102
23 Santa Rosa, CA 95405
24 707-523-1873
25 3/7/06, 4/14/06

26 Dr. Barry Brown
27 1222 Pine St.
28 St. Helena, CA 94574
707-963-2711

Stanford Hospital
Palo Alto, CA
11/06

Dr. Marko Bodor
980 Trancas St
Napa, CA 94558
707-255-5454

St. Helena Physical Therapy
St. Helena, CA
around 6/06

INTERROGATORY NO. 2:

Identify (by providing the name, address and telephone number) of all persons with knowledge regarding the underlying facts of YOUR DISABILITY CLAIM.

1 **RESPONSE TO INTERROGATORY NO. 2:**

2 Objection: vague and ambiguous as the term "underlying facts" is unclear and not
3 properly defined. Assuming that this interrogatory seeks the identity of persons who have personal
4 knowledge about the occurrence of the accident that caused Plaintiff's disability, Plaintiff responds:

5 Arthur Mathews
6 26 View Rd.
7 Calistoga, CA 94515

8 **INTERROGATORY NO. 3:**

9 Identify (by providing the name of the insurance company and policy number) any
10 disability insurance policies you have had in force at any time from November 2005 to the present.

11 **RESPONSE TO INTERROGATORY NO. 3:**

12 Plaintiff was insured by Pan-American Life Insurance Company under the policies
13 which are the subject of this lawsuit.

14 **INTERROGATORY NO. 4:**

15 Identify all PERSONS (by providing the name, address, and telephone number) with
16 whom YOU communicated or consulted regarding any rehabilitation plan or program.

17 **RESPONSE TO INTERROGATORY NO. 4:**

18 Michael Jones and Elaine Bourg at Pan American Life Insurance Co.; Lori
19 Spiekerman and Patricia Stengle at the California Department of Rehabilitation, 50 D St., Room
20 425, Santa Rosa, CA 95404, 707-576-2233

21 **INTERROGATORY NO. 5:**

22 Identify all benefits YOU have received from any source in connection with YOUR
23 DISABILITY or any inability to work.

1 RESPONSE TO INTERROGATORY NO. 5:

2 Objection: vague and ambiguous. Without waiving that objection, Plaintiff responds
3 that she has received the following benefits: certain Disability Income Policy benefits and Income
4 Continuation Policy benefits from Pan American Life Insurance Company; disability benefits from
5 the California EDD; Social Security disability benefits; rehabilitation benefits from the California
6 Department of Rehabilitation.

7
8 INTERROGATORY NO. 6:

9 Identify (by providing the date and the name and address of the PERSON performing
10 the evaluation) all evaluations that have been conducted regarding YOUR ability or inability to
11 engage in any employment or to participate in any activity.

12
13 RESPONSE TO INTERROGATORY NO. 6:

14 Objection: vague, ambiguous, overbroad and harassing and seeks information
15 previously produced in this matter. Without waiving these objections, Plaintiff responds that all
16 written medical reports on this subject in Plaintiff's possession have previously been produced in
17 this case.

18
19 INTERROGATORY NO. 7:

20 Describe in full and complete detail all facts which support YOUR contention that
21 "Defendants improperly suspended all payments of Plaintiff's benefits on all of the Policies and
22 made no payments whatsoever to Plaintiff from March 6, 2006 until July 13, 2006" as asserted in
23 Paragraph 14 of the Complaint.

24
25 RESPONSE TO INTERROGATORY NO. 7:

26 Objection: vague and ambiguous. Without waiving these objections, Plaintiff
27 responds that Defendant began paying benefits on two of the three policies Plaintiff maintained
28 with Defendant, but stopped paying benefits on those policies in March 2006 and made no

1 payments whatsoever to Plaintiff until July 13, 2006. Payments should have been made during this
2 period as Plaintiff qualified for benefits during this time period. Plaintiff is informed and believes
3 that Defendant maintains an unlawful policy and practice of ceasing benefits to policyholders at the
4 expiration of any period of identified as the initial prognosis on an Attending Physician Statement,
5 regardless of the true facts at the time benefits are terminated. Plaintiff is also informed and
6 believes that Defendant knew, at the time it terminated Plaintiff's benefits in March 2006, that
7 Plaintiff remained disabled and had not returned to work. Plaintiff is further informed and believes
8 that Defendant did not undertake a reasonable investigation to determine whether Plaintiff was
9 disabled or had returned to work prior to terminating Plaintiff's benefits, and that Defendant's
10 business practice is not to undertake any such investigation prior to terminating benefits.

11
12 INTERROGATORY NO. 8:

13 Describe in full and complete detail all facts which support YOUR contention that
14 "Defendants failed to pay any benefits on Policy No. 1257573 until September 2006. [. . .]. Since
15 September 2006, Defendants have never brought current the benefits payments due to Plaintiff, and
16 remain months in arrears on the payments due to Plaintiff" as asserted in Paragraph 15 of the
17 Complaint.

18
19 RESPONSE TO INTERROGATORY NO. 8:

20 Objection: vague and ambiguous. Without waiving these objections, Plaintiff responds
21 that Defendant never made any payments under that policy until September 2006. In September
22 2006, Defendant began making payments, but paid Plaintiff three months in arrears. Defendant
23 has still not brought the payments current.

24
25 INTERROGATORY NO. 9:

26 Describe in full and complete detail any rehabilitation program, including but not
27 limited to a detailed plan of treatment and estimated costs and estimated date of rehabilitation
28 completion, for which YOU claim you sought payment of rehabilitation benefits under the

1 disability insurance policies issued by PAN-AMERICAN to YOU.

2
3 RESPONSE TO INTERROGATORY NO. 9:

4 Objection: vague and ambiguous. Assuming that this Interrogatory asks for
5 information about the request for benefits made by Plaintiff to Defendant, and not about the
6 rehabilitation program Plaintiff subsequently underwent without the assistance of the benefits that
7 Defendant wrongfully withheld, Plaintiff responds as follows:

8 On July 21, 2006, Plaintiff wrote to Defendant and requested rehabilitation benefits as
9 provided in her policies to undertake a course of study leading to becoming a nurse. On August
10 23, 2006, Plaintiff again wrote to Defendant as follows:

11 "As you can imagine, dealing with a severe disability such as this one creates
12 enormous stress. I am no less saddled with financial commitments than before but I
13 am no longer able to work in my chosen profession of over thirty years that provided
14 me with an adequate income. I want to be a productive citizen once again and am
15 therefore pursuing a career change that will allow me to do this. Your insurance
16 policy is the bridge that will allow me the necessary funding to get there. Anticipating
17 a possible scenario such as this was the primary motivation for my purchasing your
18 company's coverage in the first place. Career retraining for me cannot possibly
19 happen without consistency on your part to cover my ongoing living expenses as well
20 as tuition, books and other student expenses. The program I am attempting is a
21 rigorous one, and I must have these issues settled so that I devote my full
22 concentration on performing well.

23 As for my rehabilitation plans, I previously began working on a Bachelor's Degree
24 but realized it would be of no benefit to my scope of practice, pay scale or work
25 setting. Now, all that is changed. For me to work as closely with patients in the
26 diagnosis, treatment planning and patient care in medicine as I did in dentistry, I will
27 have to earn at the least a Bachelor's Degree, but I am aiming for Nurse Practitioner
28 certification. This can begin at Santa Rosa Junior College, Napa Valley Junior
College, Pacific Union College, or Sonoma State University. I am currently enrolled
for fall, beginning today, in Anatomy at Santa Rosa J.C. I finished Physiology over
the summer and will be eligible to apply to the Nursing Program at Santa Rosa in
October of this year for the spring and fall of 2007. I will also pursue the application
processes for the other schools. The first step is a two year program, and the
possibilities are many to make the next step to Nurse Practitioner, but it will most
likely be an additional 2 years. A Nurse Practitioner certification will allow me
greater flexibility in my work setting and be the least detrimental to my disability.
This will provide me with more options in returning to the work force."

25 Defendant immediately denied Plaintiff the rehabilitation benefit to which Plaintiff
26 was entitled, without asking any further questions of Plaintiff or allowing her to explain any of the
27 details of her proposed plan further. Plaintiff is informed and believes that Defendant performed
28 no investigation and took no steps to ascertain any further details regarding Plaintiff's claim,

1 although certain information, such as the amount of tuition at the schools proposed by Plaintiff,
2 was easily ascertainable.

3 Had Defendant not breached its duty of good faith and fair dealing, Plaintiff would
4 have applied to enter the nursing program at Pacific Union College in St. Helena, California.
5 Plaintiff is informed and believes that the program would run for a duration of three and a half
6 years. Plaintiff is informed and believes that tuition at that institution is about \$22,000 per year. I
7 addition, Plaintiff would have needed to purchase books, a suitable computer, computer programs,
8 miscellaneous supplies, transportation costs, and overnight accommodations that would be
9 necessary when she does clinical rotations away from home. Plaintiff has not yet determined the
10 exact dollar value of these items.

11
12 INTERROGATORY NO. 10:

13 State the amount in disability benefits, not including rehabilitation benefits, which
14 YOU contend that PAN-AMERICAN owes but has not yet paid to YOU under the disability
15 insurance policies issued by PAN-AMERICAN to YOU.

16
17 RESPONSE TO INTERROGATORY NO. 10:

18 PAN AMERICAN is, and long has been, three months in arrears to Plaintiff. Thus,
19 PAN AMERICAN LIFE INSURANCE CO. currently owes Plaintiff \$8100 in addition to her
20 current monthly benefit.

21
22 INTERROGATORY NO. 11:

23 State the amount in premiums which YOU contend that PAN-AMERICAN has
24 improperly withdrawn from YOUR bank account in connection with the disability policies issued
25 by PAN-AMERICAN to YOU.

26
27 RESPONSE TO INTERROGATORY NO. 11:

28 Objection: vague and ambiguous. Assuming this Interrogatory is limited to

1 withdrawals from Plaintiff's account, and does not address the various incorrect refunds PAN
2 AMERICAN engaged in, Plaintiff responds:

3 In March 2006 Defendant improperly withdrew \$37.70 from Plaintiff's account. In
4 April 2006, Defendant improperly withdrew \$1189.61. In May 2006, Defendant improperly
5 withdrew \$37.70. In June 2006, Defendant improperly withdrew \$142.97. In July 2006,
6 Defendant improperly withdrew \$142.97. In August 2006, Defendant improperly withdrew
7 \$37.70. Thus, the total is \$1588.65.

8
9 INTERROGATORY NO. 12:

10 Describe in full and complete detail all facts which support YOUR contention that
11 PAN-AMERICAN's decision to deny YOUR claim for rehabilitation benefits was unreasonable, as
12 alleged in paragraph 25 of the Complaint.

13
14 RESPONSE TO INTERROGATORY NO. 12:

15 Objection: vague and ambiguous as to the term "full and complete detail" and cannot
16 be answered without speculating as to the meaning of that term. Without waiving that objections,
17 Plaintiff responds:

18 Plaintiff is informed and believes that Defendant's entire handling of Plaintiff's claims
19 was unreasonable. Plaintiff is informed and believes that Defendant does not have a claims manual
20 or any other written policies or procedures that offer any guidance to its claims personnel as to how
21 to handle claims that arise under the policies at issue in this lawsuit. Plaintiff is informed and
22 believes that Defendant is in violation of California law that requires such written policies and
23 guidelines and is in violation of the provisions of California law that require that certain content be
24 included in such written policies and guidelines. Plaintiff is informed and believes that
25 Defendant's claims personnel are inadequately trained on the legal requirements for adjusting
26 claims of the sort presented by Plaintiff and, in fact, are without any training on disability policies
27 or rehabilitation benefits, and are ignorant of fundamental principles of claims handling. Plaintiff
28 is informed and believes that Defendant's claims personnel are unaware of the requirements of

1 California law for handling claims like Plaintiff's. Plaintiff is informed and believes that
2 Defendant's claims personnel are unaware that California law requires that "every insurer shall
3 disclose to a first party claimant ... all benefits, coverage, time limits or other provisions of any
4 insurance policy issued by that insurer that may apply to the claim presented by the claimant."
5 Plaintiff is informed and believes that Defendant's claim personnel are instructed to do the exact
6 opposite of the law's requirement in that regard, and wilfully and intentionally do not provide
7 claimants with any benefits or other required information unless specifically requested by the
8 claimant. Plaintiff is informed and believes that Defendant's claims personnel are also uninformed
9 that California law requires that a claim denial be in writing and "shall provide to the claimant a
10 statement listing all bases for such rejection or denial and the factual and legal bases for each
11 reason given for such rejection or denial which is then within the insurer's knowledge." Plaintiff is
12 informed and believe that Defendant wilfully and intentionally fails and refuses to provide written
13 claims denials that comply with the requirements of California law. Plaintiff is informed and
14 believes that Defendant ignored the requirements of California law when it cut off Plaintiff's
15 disability benefits without any notice whatsoever, without any investigation as to whether benefits
16 should be cut off, without a writing setting out the factual and legal bases for cutting off benefits,
17 and cut off benefits in spite of the fact that it had information that benefits were still payable and
18 that its secret reason for cutting off benefits was wrong.

19 Plaintiff is informed that each of the above wrongful acts is committed on a frequent
20 basis and is a business practice of Defendant, and is done by Defendant wilfully and intentionally
21 and in conscious disregard of the rights of its policyholders.

22 Plaintiff is informed and believes that Defendant maintains a business practice of
23 terminating disability benefits based on information contained in the initial Attending Physician
24 Statement, without further investigation, notice to the insured or consideration of new or contrary
25 information already received by Defendant. Plaintiff is informed and believes that this practice is
26 unreasonable and illegal as a matter of California law. Plaintiff is informed and believes that
27 Defendant utilized this unreasonable and illegal business practice in Plaintiff's case to terminate her
28 benefits.

1 Plaintiff is informed and believes that Defendant has a business practice of not
2 investigating claims for rehabilitation benefits, and instead relying solely on claimants to perform
3 the investigation that Defendant is legally required to perform. Defendant failed and refused to
4 investigate Plaintiff's claim for rehabilitation benefits prior to denying it.

5 Plaintiff is informed and believes that Defendant has a pattern and practice of denying
6 claims for rehabilitation benefits without regard to the merits of the claim, and that Defendant is
7 unable to identify a single instance in which it granted rehabilitation benefits. Plaintiff is informed
8 and believes that Defendant has predetermined never to pay any rehabilitation benefits, and that its
9 procedures and rationales regarding rehabilitation benefits are a sham to cover its predetermined
10 decision to deny all such claims.

11 Plaintiff is informed and believes that Defendant interprets the policy language
12 regarding rehabilitation benefits to require claimants to provide Defendant with overpowering
13 evidence as to the details of the proposed rehabilitation plan. If a claimant fails to meet the
14 arbitrary requirements set by Defendant, but not communicated to claimants, the claim is denied
15 and the claimant is provided no opportunity to have the matter reviewed on appeal. Plaintiff is
16 informed and believes that this interpretation of the policy is clearly erroneous under California
17 law.

18 Plaintiff's claim for rehabilitation benefits was denied by Defendant in a letter dated
19 August 25, 2006. All Defendant's letter said about the denial of rehabilitation benefits was: "As
20 for your rehabilitation plan Pan American Life will not be extending benefits." Plaintiff is
21 informed and believes that this explanation of the reason for denial of her claim for benefits is
22 insufficient and illegal under California law. When Plaintiff attempted to find out where her plan
23 fell short of Defendant's requirements, Defendant refused to tell her. When Plaintiff asked if she
24 could appeal the denial, Defendant refused to answer her question. Plaintiff is informed and
25 believes that Defendant did not possess sufficient information to deny her request for rehabilitation
26 benefits, but denied them anyway without requesting further information or performing any
27 investigation to obtain further information.

28 When Plaintiff submitted her claim for disability insurance benefits, Defendant failed

1 and refused to determine what benefits were payable monthly to Plaintiff, and failed to pay
2 Plaintiff on a policy held by Plaintiff with Defendant. When Plaintiff complained that the amount
3 of her benefit seemed smaller than she expected, Defendant falsely represented to her that
4 Defendant was paying the correct amount, when, in fact, Defendant was underpaying. It was only
5 when Plaintiff, through her own efforts, discovered the existence of a policy benefit that was going
6 unpaid that Defendant owned up to the fact that it was underpaying Plaintiff and began paying the
7 additional benefit.

8 Defendant made numerous improper withdrawals of premiums from Plaintiff's bank
9 account, as detailed in response to Interrogatory No. 11, above. When Plaintiff complained about
10 the improper withdrawals, Defendant failed and refused to properly account for the withdrawals or
11 to make refunds in the correct amount. Only after Plaintiff complained to the California
12 Department of Insurance did Defendant finally reconcile its improper withdrawals and refund to
13 Plaintiff the full amount of premiums improperly withdrawn.

14 Defendant improperly stopped making payments of monthly disability benefits for
15 three months in 2006. When it started making payments again, it failed to pay for the three
16 months during which payments had been stopped. It continued to pay three months in arrears,
17 even after this lawsuit was filed specifically alleging that Defendant had not paid the past due
18 benefits, and to the date of these Answers to Interrogatories, Defendant continues to make
19 payments three months in arrears. For a period of time, Defendant sent forms showing that the
20 payments were being made three months behind. Some of the forms were undated, making it more
21 difficult to discern that Defendant was improperly paying in arrears. Plaintiff is informed and
22 believes that Defendant failed to provide satisfactory "Explanations of Benefits" as required by
23 California law. In March 2008, Defendant falsely and fraudulently represented to Plaintiff that it
24 was not paying Plaintiff in arrears, but instead was paying Plaintiff current. Plaintiff is informed
25 and believes that Defendant knew or in the exercise of reasonable care should have known that this
26 representation was false and would be likely to mislead.

27 Due to the multiple problems created by Defendant's many unreasonable acts, as
28 aforesaid, Plaintiff complained to the California Department of Insurance and the Napa County

1 District Attorney about Defendant's improper and illegal conduct. Plaintiff is informed and
2 believes that, in retaliation for those complaints, Defendant scheduled her for an Insurance
3 Company Medical Examination in Palo Alto California, although there were many qualified
4 doctors closer to Plaintiff's home. Plaintiff is also informed and believes that, at the same time
5 and as retaliation for Plaintiff's complaints, Defendant placed Plaintiff under surveillance.
6 Defendant even had Plaintiff under surveillance for the lengthy drive to Palo Alto, even though
7 Plaintiff's disability does not preclude her from driving.

8 Plaintiff is informed and believes that Defendant's unreasonable, intentional and bad
9 faith conduct has continued with its handling of the instant litigation. Plaintiff is informed and
10 believes that Defendant has failed and refused to admit that Plaintiff is, and at relevant times was,
11 disabled within the meaning of the insurance policies here at issue. Plaintiff is informed and
12 believes that Defendant is aware that Plaintiff is and was disabled, that Defendant engaged in an
13 extraordinarily detailed review of Plaintiff's claims to determine that she was disabled, including
14 placing Plaintiff under surveillance and requiring Plaintiff to be examined by a physician selected
15 by Defendant. Plaintiff is informed and believes that the reason Defendant refuses to admit these
16 facts which it knows to be true is in bad faith to make this litigation more expensive for Plaintiff.

17 Investigation and discovery are continuing, and further facts regarding Defendant's
18 unreasonable conduct may come to light during discovery or at trial.

19
20 INTERROGATORY NO. 13:

21 Describe in full and complete detail all facts which support YOUR contention that
22 YOU have "suffered and continue[] to suffer injury, embarrassment, humiliation and mental
23 anguish all to her damage in an amount according to proof" as alleged in paragraphs 27, 33, 37, 43
24 and 47 of the Complaint.

25
26 RESPONSE TO INTERROGATORY NO. 13:

27 Beginning with the injuries suffered from her fall off the ladder in November 2005,
28 Plaintiff has been in pain. Only someone who has suffered chronic pain can understand the fatigue

1 that must be overcome in dealing with it. Plaintiff has mustered all of her energy and resources in
2 pursuit of a new career and has managed to move forward on that front despite Defendant's bad
3 faith failure to provide rehabilitation benefits and Defendant's numerous other wrongful acts as
4 explained in answers to these Interrogatories. Plaintiff has spent countless hours, at first
5 individually, then with the help of the state, and finally with a lawyer, in a futile attempt to get
6 cooperation from Defendant, not only for her living expenses, but for her re-education that was
7 clearly offered in the policies she was sold and which she faithfully paid for approximately fifteen
8 years. This entire process has been extremely draining and upsetting and has caused and continues
9 to cause Plaintiff to suffer.

10
11 **INTERROGATORY NO. 14:**

12 Describe in full and complete detail all facts which support YOUR contention that
13 YOU are entitled to punitive damages as alleged in paragraphs 28, 34, and 44 of the Complaint.
14

15 **RESPONSE TO INTERROGATORY NO. 14:**

16 Objection: vague and ambiguous as to the term "full and complete detail" and cannot
17 be answered without speculating as to the meaning of that term. Without waiving that objections,
18 Plaintiff responds:

19 Plaintiff is informed and believes that Defendant's entire handling of Plaintiff's claims
20 was unreasonable. Plaintiff is informed and believes that Defendant does not have a claims manual
21 or any other written policies or procedures that offer any guidance to its claims personnel as to how
22 to handle claims that arise under the policies at issue in this lawsuit. Plaintiff is informed and
23 believes that Defendant is in violation of California law that requires such written policies and
24 guidelines and is in violation of the provisions of California law that require that certain content be
25 included in such written policies and guidelines. Plaintiff is informed and believes that
26 Defendant's claims personnel are inadequately trained on the legal requirements for adjusting
27 claims of the sort presented by Plaintiff and, in fact, are without any training on disability policies
28 or rehabilitation benefits, and are ignorant of fundamental principles of claims handling. Plaintiff

1 is informed and believes that Defendant's claims personnel are unaware of the requirements of
2 California law for handling claims like Plaintiff's. Plaintiff is informed and believes that
3 Defendant's claims personnel are unaware that California law requires that "every insurer shall
4 disclose to a first party claimant ... all benefits, coverage, time limits or other provisions of any
5 insurance policy issued by that insurer that may apply to the claim presented by the claimant."
6 Plaintiff is informed and believes that Defendant's claim personnel are instructed to do the exact
7 opposite of the law's requirement in that regard, and wilfully and intentionally do not provide
8 claimants with any benefits or other required information unless specifically requested by the
9 claimant. Plaintiff is informed and believes that Defendant's claims personnel are also uninformed
10 that California law requires that a claim denial be in writing and "shall provide to the claimant a
11 statement listing all bases for such rejection or denial and the factual and legal bases for each
12 reason given for such rejection or denial which is then within the insurer's knowledge." Plaintiff is
13 informed and believe that Defendant wilfully and intentionally fails and refuses to provide writt
14 claims denials that comply with the requirements of California law. Plaintiff is informed and
15 believes that Defendant ignored the requirements of California law when it cut off Plaintiff's
16 disability benefits without any notice whatsoever, without any investigation as to whether benefits
17 should be cut off, without a writing setting out the factual and legal bases for cutting off benefits,
18 and cut off benefits in spite of the fact that it had information that benefits were still payable and
19 that its secret reason for cutting off benefits was wrong.

20 Plaintiff is informed that each of the above wrongful acts is committed on a frequent
21 basis and is a business practice of Defendant, and is done by Defendant wilfully and intentionally
22 and in conscious disregard of the rights of its policyholders.

23 Plaintiff is informed and believes that Defendant maintains a business practice of
24 terminating disability benefits based on information contained in the initial Attending Physician
25 Statement, without further investigation, notice to the insured or consideration of new or contrary
26 information already received by Defendant. Plaintiff is informed and believes that this practice is
27 unreasonable and illegal as a matter of California law. Plaintiff is informed and believes that
28 Defendant utilized this unreasonable and illegal business practice in Plaintiff's case to terminate her

1 benefits.

2 Plaintiff is informed and believes that Defendant has a business practice of not
3 investigating claims for rehabilitation benefits, and instead relying solely on claimants to perform
4 the investigation that Defendant is legally required to perform. Defendant failed and refused to
5 investigate Plaintiff's claim for rehabilitation benefits prior to denying it.

6 Plaintiff is informed and believes that Defendant has a pattern and practice of denying
7 claims for rehabilitation benefits without regard to the merits of the claim, and that Defendant is
8 unable to identify a single instance in which it granted rehabilitation benefits. Plaintiff is informed
9 and believes that Defendant has predetermined never to pay any rehabilitation benefits, and that its
10 procedures and rationales regarding rehabilitation benefits are a sham to cover its predetermined
11 decision to deny all such claims.

12 Plaintiff is informed and believes that Defendant interprets the policy language
13 regarding rehabilitation benefits to require claimants to provide Defendant with overpowering
14 evidence as to the details of the proposed rehabilitation plan. If a claimant fails to meet the
15 arbitrary requirements set by Defendant, but not communicated to claimants, the claim is denied
16 and the claimant is provided no opportunity to have the matter reviewed on appeal. Plaintiff is
17 informed and believes that this interpretation of the policy is clearly erroneous under California
18 law.

19 Plaintiff's claim for rehabilitation benefits was denied by Defendant in a letter dated
20 August 25, 2006. All Defendant's letter said about the denial of rehabilitation benefits was: "As
21 for your rehabilitation plan Pan American Life will not be extending benefits." Plaintiff is
22 informed and believes that this explanation of the reason for denial of her claim for benefits is
23 insufficient and illegal under California law. When Plaintiff attempted to find out where her plan
24 fell short of Defendant's requirements, Defendant refused to tell her. When Plaintiff asked if she
25 could appeal the denial, Defendant refused to answer her question. Plaintiff is informed and
26 believes that Defendant did not possess sufficient information to deny her request for rehabilitation
27 benefits, but denied them anyway without requesting further information or performing any
28 investigation to obtain further information.

1 When Plaintiff submitted her claim for disability insurance benefits, Defendant failed
2 and refused to determine what benefits were payable monthly to Plaintiff, and failed to pay
3 Plaintiff on a policy held by Plaintiff with Defendant. When Plaintiff complained that the amount
4 of her benefit seemed smaller than she expected, Defendant falsely represented to her that
5 Defendant was paying the correct amount, when, in fact, Defendant was underpaying. It was only
6 when Plaintiff, through her own efforts, discovered the existence of a policy benefit that was going
7 unpaid that Defendant owned up to the fact that it was underpaying Plaintiff and began paying the
8 additional benefit.

9 Defendant made numerous improper withdrawals of premiums from Plaintiff's bank
10 account, as detailed in response to Interrogatory No. 11, above. When Plaintiff complained about
11 the improper withdrawals, Defendant failed and refused to properly account for the withdrawals or
12 to make refunds in the correct amount. Only after Plaintiff complained to the California
13 Department of Insurance did Defendant finally reconcile its improper withdrawals and refund to
14 Plaintiff the full amount of premiums improperly withdrawn.

15 Defendant improperly stopped making payments of monthly disability benefits for
16 three months in 2006. When it started making payments again, it failed to pay for the three
17 months during which payments had been stopped. It continued to pay three months in arrears,
18 even after this lawsuit was filed specifically alleging that Defendant had not paid the past due
19 benefits, and to the date of these Answers to Interrogatories, Defendant continues to make
20 payments three months in arrears. For a period of time, Defendant sent forms showing that the
21 payments were being made three months behind. Some of the forms were undated, making it more
22 difficult to discern that Defendant was improperly paying in arrears. Plaintiff is informed and
23 believes that Defendant failed to provide satisfactory "Explanations of Benefits" as required by
24 California law. In March 2008, Defendant falsely and fraudulently represented to Plaintiff that it
25 was not paying Plaintiff in arrears, but instead was paying Plaintiff current. Plaintiff is informed
26 and believes that Defendant knew or in the exercise of reasonable care should have known that this
27 representation was false and would be likely to mislead.

28 Due to the multiple problems created by Defendant's many unreasonable acts, as

1 aforesaid, Plaintiff complained to the California Department of Insurance and the Napa County
2 District Attorney about Defendant's improper and illegal conduct. Plaintiff is informed and
3 believes that, in retaliation for those complaints, Defendant scheduled her for an Insurance
4 Company Medical Examination in Palo Alto California, although there were many qualified
5 doctors closer to Plaintiff's home. Plaintiff is also informed and believes that, at the same time
6 and as retaliation for Plaintiff's complaints, Defendant placed Plaintiff under surveillance.
7 Defendant even had Plaintiff under surveillance for the lengthy drive to Palo Alto, even though
8 Plaintiff's disability does not preclude her from driving.

9 Plaintiff is informed and believes that Defendant's unreasonable, intentional and bad
10 faith conduct has continued with its handling of the instant litigation. Plaintiff is informed and
11 believes that Defendant has failed and refused to admit that Plaintiff is, and at relevant times was,
12 disabled within the meaning of the insurance policies here at issue. Plaintiff is informed and
13 believes that Defendant is aware that Plaintiff is and was disabled, that Defendant engaged in an
14 extraordinarily detailed review of Plaintiff's claims to determine that she was disabled, including
15 placing Plaintiff under surveillance and requiring Plaintiff to be examined by a physician selected
16 by Defendant. Plaintiff is informed and believes that the reason Defendant refuses to admit these
17 facts which it knows to be true is in bad faith to make this litigation more expensive for Plaintiff.

18 Plaintiff is informed and believes that Defendant made the representations set out in
19 answer to Interrogatory No. 15 with knowledge that said representations were false, without any
20 reasonable basis for knowing that they were true, with the intention of misleading potential
21 customers into purchasing insurance from Defendant. Plaintiff reasonable relied upon said
22 representations.

23 Plaintiff is informed and believes that each of the above actions was done
24 intentionally, fraudulently, and in conscious disregard of Plaintiff's rights, in bad faith, in violation
25 of Defendant's duty of good faith and fair dealing. Plaintiff is informed and believes that the
26 above acts were performed as business practices and policies formulated and implemented by
27 Defendant. Plaintiff is informed and believes that each of the above acts was performed by
28 Defendant's employees at the direction of Defendant and that each of the above acts was ratified by

1 Defendant.

2 Investigation and discovery are continuing, and further facts supporting punitive
3 damages may come to light during discovery or at trial.

4
5 INTERROGATORY NO. 15:

6 Identify in full and complete detail the "representations contained in Defendants'
7 advertising and in the Policies" that were false as alleged in paragraphs 30 and 31 of the
8 Complaint.

9
10 RESPONSE TO INTERROGATORY NO. 15:

11 Objection: vague and ambiguous as to the term "full and complete detail." Without
12 waiving that objection, Plaintiff responds:

13 Pan American made the following written representations outside the policy:

14 "We are here to serve you."

15 "As our policyholder, your satisfaction is very important to us."

16 "Should you have a claim, we fully expect to provide a fair settlement in a timely
17 fashion."

18 "The Monthly Benefit . . will be paid after 60 days of total disability. The
19 benefit will continue for a Maximum Period of 5 years.'

20 "Rehabilitation - The Company will pay up to 24 times the Monthly Benefit for a
21 Company approved rehabilitation program."

22 "Waiver of Premium - After ninety days of total or residual disability, the policy
23 premiums will be waived during continued disability until age 65."

24 In addition, the policies contain representations under the following headings:

25 Monthly benefit payments; rehabilitation; waiver of premium; premium refund; time
26 of payment of claim; and total disability.

27
28 INTERROGATORY NO. 16:

1 State the amount(s) that YOU are claiming in economic damages in this action and the
2 basis for YOUR computation of economic damages.

3
4 **RESPONSE TO INTERROGATORY NO. 16:**

5 Plaintiff is seeking economic damages for Defendant's failure to pay her claim for
6 rehabilitation benefits, as set out in response to Interrogatory No. 9, above, and failure to pay her
7 disability benefits in full, as set out in response to Interrogatory No. 10, above.

8
9 **INTERROGATORY NO. 19:**

10 State the amount(s) that you are claiming in non-economic damages in this action and
11 the basis for YOUR computation of non-economic damages.

12
13 **RESPONSE TO INTERROGATORY NO. 19:**

14 Plaintiff has not made a claim for a specific amount of non-economic damages. At
15 the time of trial, the jury will determine what amount of non-economic damages is appropriate.

16
17 **INTERROGATORY NO. 19 (sic):**

18 State the amount that YOU are claiming in attorneys' fees in this action.

19
20 **RESPONSE TO INTERROGATORY NO. 19:**

21 Plaintiff has not made a claim for a specific amount of attorney fees, and cannot do so
22 at this time because the amount of attorney fees cannot be determined until the conclusion of the
23 case. Plaintiff is informed and believes that a Court would likely determine that \$400 per hour is a
24 reasonable hourly fee for Plaintiff's counsel.

25
26 **INTERROGATORY NO. 19 (sic):**

27 State in detail all facts which YOU contend support YOUR contention that PAN-
28 AMERICAN is liable for YOUR damages.

1 **RESPONSE TO INTERROGATORY NO. 19:**

2 **Objection:** This Interrogatory is compound to the extent that it seeks information
3 about each of the allegations of the Complaint. To the extent that it does that, it violates the limit
4 on the number of interrogatories. Further, it is vague and ambiguous and calls for information
5 protected by the attorney work product privilege, in that it seeks attorney theory as to what facts to
6 emphasize out of the numerous facts of this case which demonstrate that Defendant is liable.
7 Further, its is vague and ambiguous as to the term "in detail" and cannot be answered without
8 speculating as to the meaning of that term. Further, the term "damages" is vague and ambiguous.
9 For the purpose of this response, Plaintiff assumes that the term "damages" does not include
10 punitive damages, which are the subject of another Interrogatory. Also, for the purpose of this
11 Interrogatory, Plaintiff assumes that the term "liable for YOUR damages" as used in this
12 Interrogatory asks about the wrongful acts committed by Defendant that give rise to liability.
13 Without waiving that objections, Plaintiff responds:

14 Plaintiff is informed and believes that Defendant's entire handling of Plaintiff's claims
15 was unreasonable. Plaintiff is informed and believes that Defendant does not have a claims manual
16 or any other written policies or procedures that offer any guidance to its claims personnel as to how
17 to handle claims that arise under the policies at issue in this lawsuit. Plaintiff is informed and
18 believes that Defendant is in violation of California law that requires such written policies and
19 guidelines and is in violation of the provisions of California law that require that certain content be
20 included in such written policies and guidelines. Plaintiff is informed and believes that
21 Defendant's claims personnel are inadequately trained on the legal requirements for adjusting
22 claims of the sort presented by Plaintiff and, in fact, are without any training on disability policies
23 or rehabilitation benefits, and are ignorant of fundamental principles of claims handling. Plaintiff
24 is informed and believes that Defendant's claims personnel are unaware of the requirements of
25 California law for handling claims like Plaintiff's. Plaintiff is informed and believes that
26 Defendant's claims personnel are unaware that California law requires that "every insurer shall
27 disclose to a first party claimant ... all benefits, coverage, time limits or other provisions of any
28 insurance policy issued by that insurer that may apply to the claim presented by the claimant."

1 Plaintiff is informed and believes that Defendant's claim personnel are instructed to do the exact
2 opposite of the law's requirement in that regard, and wilfully and intentionally do not provide
3 claimants with any benefits or other required information unless specifically requested by the
4 claimant. Plaintiff is informed and believes that Defendant's claims personnel are also uninformed
5 that California law requires that a claim denial be in writing and "shall provide to the claimant a
6 statement listing all bases for such rejection or denial and the factual and legal bases for each
7 reason given for such rejection or denial which is then within the insurer's knowledge." Plaintiff is
8 informed and believe that Defendant wilfully and intentionally fails and refuses to provide writt
9 claims denials that comply with the requirements of California law. Plaintiff is informed and
10 believes that Defendant ignored the requirements of California law when it cut off Plaintiff's
11 disability benefits without any notice whatsoever, without any investigation as to whether benefits
12 should be cut off, without a writing setting out the factual and legal bases for cutting off benefits,
13 and cut off benefits in spite of the fact that it had information that benefits were still payable and
14 that its secret reason for cutting off benefits was wrong.

15 Plaintiff is informed that each of the above wrongful acts is committed on a frequent
16 basis and is a business practice of Defendant, and is done by Defendant wilfully and intentionally
17 and in conscious disregard of the rights of its policyholders.

18 Plaintiff is informed and believes that Defendant maintains a business practice of
19 terminating disability benefits based on information contained in the initial Attending Physician
20 Statement, without further investigation, notice to the insured or consideration of new or contrary
21 information already received by Defendant. Plaintiff is informed and believes that this practice is
22 unreasonable and illegal as a matter of California law. Plaintiff is informed and believes that
23 Defendant utilized this unreasonable and illegal business practice in Plaintiff's case to terminate her
24 benefits.

25 Plaintiff is informed and believes that Defendant has a business practice of not
26 investigating claims for rehabilitation benefits, and instead relying solely on claimants to perform
27 the investigation that Defendant is legally required to perform. Defendant failed and refused to
28 investigate Plaintiff's claim for rehabilitation benefits prior to denying it.

1 Plaintiff is informed and believes that Defendant has a pattern and practice of denying
2 claims for rehabilitation benefits without regard to the merits of the claim, and that Defendant is
3 unable to identify a single instance in which it granted rehabilitation benefits. Plaintiff is informed
4 and believes that Defendant has predetermined never to pay any rehabilitation benefits, and that its
5 procedures and rationales regarding rehabilitation benefits are a sham to cover its predetermined
6 decision to deny all such claims.

7 Plaintiff is informed and believes that Defendant interprets the policy language
8 regarding rehabilitation benefits to require claimants to provide Defendant with overpowering
9 evidence as to the details of the proposed rehabilitation plan. If a claimant fails to meet the
10 arbitrary requirements set by Defendant, but not communicated to claimants, the claim is denied
11 and the claimant is provided no opportunity to have the matter reviewed on appeal. Plaintiff is
12 informed and believes that this interpretation of the policy is clearly erroneous under California
13 law.

14 Plaintiff's claim for rehabilitation benefits was denied by Defendant in a letter dated
15 August 25, 2006. All Defendant's letter said about the denial of rehabilitation benefits was: "As
16 for your rehabilitation plan Pan American Life will not be extending benefits." Plaintiff is
17 informed and believes that this explanation of the reason for denial of her claim for benefits is
18 insufficient and illegal under California law. When Plaintiff attempted to find out where her plan
19 fell short of Defendant's requirements, Defendant refused to tell her. When Plaintiff asked if she
20 could appeal the denial, Defendant refused to answer her question. Plaintiff is informed and
21 believes that Defendant did not possess sufficient information to deny her request for rehabilitation
22 benefits, but denied them anyway without requesting further information or performing any
23 investigation to obtain further information.

24 When Plaintiff submitted her claim for disability insurance benefits, Defendant failed
25 and refused to determine what benefits were payable monthly to Plaintiff, and failed to pay
26 Plaintiff on a policy held by Plaintiff with Defendant. When Plaintiff complained that the amount
27 of her benefit seemed smaller than she expected, Defendant falsely represented to her that
28 Defendant was paying the correct amount, when, in fact, Defendant was underpaying. It was only

1 when Plaintiff, through her own efforts, discovered the existence of a policy benefit that was going
2 unpaid that Defendant owned up to the fact that it was underpaying Plaintiff and began paying the
3 additional benefit.

4 Defendant made numerous improper withdrawals of premiums from Plaintiff's bank
5 account, as detailed in response to Interrogatory No. 11, above. When Plaintiff complained about
6 the improper withdrawals, Defendant failed and refused to properly account for the withdrawals or
7 to make refunds in the correct amount. Only after Plaintiff complained to the California
8 Department of Insurance did Defendant finally reconcile its improper withdrawals and refund to
9 Plaintiff the full amount of premiums improperly withdrawn.

10 Defendant improperly stopped making payments of monthly disability benefits for
11 three months in 2006. When it started making payments again, it failed to pay for the three
12 months during which payments had been stopped. It continued to pay three months in arrears,
13 even after this lawsuit was filed specifically alleging that Defendant had not paid the past due
14 benefits, and to the date of these Answers to Interrogatories, Defendant continues to make
15 payments three months in arrears. For a period of time, Defendant sent forms showing that the
16 payments were being made three months behind. Some of the forms were undated, making it more
17 difficult to discern that Defendant was improperly paying in arrears. Plaintiff is informed and
18 believes that Defendant failed to provide satisfactory "Explanations of Benefits" as required by
19 California law. In March 2008, Defendant falsely and fraudulently represented to Plaintiff that it
20 was not paying Plaintiff in arrears, but instead was paying Plaintiff current. Plaintiff is informed
21 and believes that Defendant knew or in the exercise of reasonable care should have known that this
22 representation was false and would be likely to mislead.

23 Due to the multiple problems created by Defendant's many unreasonable acts, as
24 aforesaid, Plaintiff complained to the California Department of Insurance and the Napa County
25 District Attorney about Defendant's improper and illegal conduct. Plaintiff is informed and
26 believes that, in retaliation for those complaints, Defendant scheduled her for an Insurance
27 Company Medical Examination in Palo Alto California, although there were many qualified
28 doctors closer to Plaintiff's home. Plaintiff is also informed and believes that, at the same time

1 and as retaliation for Plaintiff's complaints, Defendant placed Plaintiff under surveillance.
2 Defendant even had Plaintiff under surveillance for the lengthy drive to Palo Alto, even though
3 Plaintiff's disability does not preclude her from driving.

4 Plaintiff is informed and believes that Defendant made the representations set out in
5 answer to Interrogatory No. 15 with knowledge that said representations were false, without any
6 reasonable basis for knowing that they were true, with the intention of misleading potential
7 customers into purchasing insurance from Defendant. Plaintiff reasonable relied upon said
8 representations.

9 Plaintiff is informed and believes that Defendant's unreasonable, intentional and bad
10 faith conduct has continued with its handling of the instant litigation. Plaintiff is informed and
11 believes that Defendant has failed and refused to admit that Plaintiff is, and at relevant times was,
12 disabled within the meaning of the insurance policies here at issue. Plaintiff is informed and
13 believes that Defendant is aware that Plaintiff is and was disabled, that Defendant engaged in an
14 extraordinarily detailed review of Plaintiff's claims to determine that she was disabled, including
15 placing Plaintiff under surveillance and requiring Plaintiff to be examined by a physician selected
16 by Defendant. Plaintiff is informed and believes that the reason Defendant refuses to admit these
17 facts which it knows to be true is in bad faith to make this litigation more expensive for Plaintiff.

18 Investigation and discovery are continuing, and further facts supporting liability may
19 come to light during discovery or at trial.
20

21 **INTERROGATORY NO. 20:**

22 Identify any and all specific activities and/or employment that YOU have been
23 qualified, approved or cleared to perform by any health care professional, occupational or physical
24 therapist, or state or federal agency.
25

26 **RESPONSE TO INTERROGATORY NO. 20:**

27 Nurse.
28

1 INTERROGATORY NO. 21:


2 Identify all DOCUMENTS which support YOUR responses in Interrogatory Nos. 1
3 through 20 above.

4
5 RESPONSE TO INTERROGATORY NO. 21:

6 Objection: vague and ambiguous. Without waiving this objection, Plaintiff responds:
7 the documents previously produced in this matter by the parties hereto, and the documents being
8 produced in response to Defendant's First Request to Produce.

9 Dated: March 19, 2008

LAW OFFICE OF MICHAEL E. KINNEY

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11 By: 
12 Michael E. Kinney
13 Attorney for Plaintiff
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PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5

I declare that:

I am employed in the County of Sonoma, California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is: Law Offices of Michael E. Kinney, 438 First St., Fourth Floor, Santa Rosa, CA 95401. I am readily familiar with said law firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service. In the ordinary course of business, correspondence is deposited with the U.S. Postal Service the same day.

On March 19, 2008, I served the attached PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES in this action by placing a true copy thereof in an envelope, which on the same date, at said law firm, was sealed and placed for deposit in the U.S. Postal Service, pursuant to said law firm's ordinary business practices for collection and mailing. Each envelope bore the name and address of the person served as follows:

Thomas A. Evans, Esq.
REED SMITH LLP
P.O. Box 2084
Oakland, CA 94604-2084

Attorney for Defendant

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 19, 2008 at Santa Rosa, California.

Michael E. Kinney

Michael E. Kinney

VERIFICATION TO FOLLOW